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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/647,305 | 08/26/2003 | Sol Katzen | SOLK-100 | 3671 |
| 217 | 7590 | 06/14/2006 | EXAMINER | |
| FISHER, CHRISTEN & SABOL 1725 K STREET, N.W. SUITE 1108 WASHINGTON, DC 20006 | | | WINSTON, RANDALL O | |
| | | ART UNIT | PAPER NUMBER | 1655 |

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/647,305 | KATZEN, SOL | |
| | Examiner | Art Unit | |
| | Randall Winston | 1655 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04/21/2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 0704 and 0105.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election of species of the halophytes species in the reply filed on 04/21/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the terms "small" or "substantially". No objective criterion is provided in the specification or claim to apprise one of skill in the art of the meaning "small" or "substantially." There is no definition of "small" or "substantially" in the claims or specification to apprise one of skill in the art with un ambiguous meaning of the claimed invention. Therefore, applicant may overcome this rejection by clearly delineating the metes and bonds of what are "small" or "substantially".

All other claims depend directly or indirectly from rejected claims and are, therefore, also rejected under 35 U.S.C. 112, second paragraph for the reasons set forth above.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 is rejected under 35 U.S.C. 102(b) as being anticipated by or in the alternative, under 35 U.S.C. 103(a) as being obvious over Park (Derwent- ACC- NO: 2002-563565, see abstract).

Although very unclear as drafted, Applicant claims a process of treating halophytes comprising soaking the halophytes in an aqueous solution containing acid for a sufficient length of time to produce a food and/or feed of a halophyte of reduced mineral content is apparently claimed.

Park anticipates the claimed invention because Park teaches (see, abstract) a feed of a halophyte composition (i.e. the halophyte is *salicornia herbacea* whereas the *salicornia herbacea* is a drink which is utilized for medicinal purpose and/or for

nourishment purposes for a subject. Please note that a feed is defined as to supply a subject with nourishment) comprising the extraction of a halophyte (i.e. *salicornia hebacea*) by placing the halophyte within an aqueous solution (i.e. water) containing acid (i.e. citric acid) whereas Park's same extraction process as the claimed invention's extraction process would inherently produce the claimed invention's feed halophyte composition with reduced mineral content.

However, while the Park reference does not expressly teach all the claimed invention's extraction methods, it appears that Park's feed halophyte composition and the claimed composition invention's feed halophyte composition are the same because both references utilize the same extraction process of placing a halophyte within an aqueous solution containing an acid to inherently produce the same feed product, absent clear and convincing evidence to the contrary. The adjustment of other conventional working conditions therein (i.e. the claimed invention's extraction method's that includes the halophyte is utilized in its dried and/or wet state, the length of time and the temperature, and the substitution of one functionally equivalent acid for another and the separation step to aid in reducing the mineral content), is deemed merely a matter of judicial selection and routine optimization which is well within the purview of the skilled artisan.

Accordingly, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art the time the invention was made, especially in the absence of evidence to the contrary.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CHRISTOPHER R. TATE
PRIMARY EXAMINER